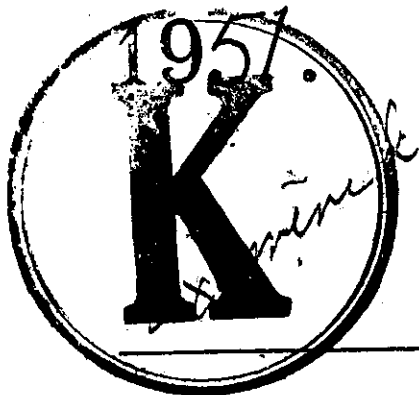




File No. S. Belgaum 8/51

Legal DEPARTMENT
A BRANCH

Subject: — Suits Belgaum

In the Court of Civil Judge (S.D.) Belgaum.

Civil Suit No. 126 of 1949.

Narayn Devrao Deshpande — Plt.

vs

at Bombay

Debt

For an injunction directing
Government to pay annually
to the Plaintiff Rs. 71/- as Deshpande
Kulkarni Hake and for arrears.

E

S Belgaum 8/51

File No.

Std. Sect. 34-B

S. Bel 8/51

C O N T E N T S.

Legal Department File No., 5:.....Bel. 8/51

Sr. No.	Compilation No.	Subject	Pages.
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Suits Belgaum.

C. S. No. 126 of 1949.

Narayan Dencao' Deshpande

v/s.

State of Bombay

For an injunction directing Govt. to
pay annually to the plff. Rs 71/- as
Deshpande ~~Karkuni~~ Karkuni Hak
and for arrears.

1-76

Translation of the plaint.

Suit No. 18 of 1946.

In the Court of Civil Judge First Class Kurundwad State Jr.

1.) Narayan Deoraom Deshpande Caste;Barhmin. }
Occupation : Landlord, Age: 51, residing } Pltff.
at Hosur Belgaum. }

VS.

1) The State of Bombay (since the State of Sangli is merged with the State of Bombay.) } Defdt.

Claims, for jurisdiction: Rs. 4,554/-

Herein the plttf.states as under:-

The Pltff is Paragana Watanwar Deshpande of Kurundwad Jr. State and as such, his ancestors were holding the Deshpandeki Watan lands and cash allowance for Deshpande Service. Along with other rights, there is the appointment of a clerk for Rs.71/- per annum from the state which is evident from the Terij latra Hakk Jamindar for 1257 (Fasli (1847.A.D.)). Then after the Deshpande Karkun was appointed and services were utilised in Yellur taluka for account purposes, that the clerk Rs.71/- are allotted as his pay. The Kurundwad Jr. State by its orders No.805, dt.22-4-1898, commuted the Deshpande Watan by levying a settlement Judi of 0-5-0 in a rupee and dispenses with the services of the Deshpande in the same year the State Kurundwad terminated the services of the Deshpande Karkun also stopped the payment of Karkun's allowance (Pay). According to this, State Order, the services of the plttf.terminated but his allowance of Rs.71/- for Deshpande Karkunki was entitled to him. But instead of giving the allowance to the plttf. the accounts were being adjusted in the state record. This not give Rs.71/- to the plttf's ancestor by the state, unlawful. The plttf. has filed this suit to recover the previous allowance of Rs.71/- and also the future allowance.

The ancestors of the plttf. were getting the allowance & the kadim Inam land of paragana Ajamnagar. The said allowance and the kadim lands were entrusted from the very old days to any ancestors. This Deshpande Karkun Hakk started from the time when there was a political dn. of Ajamnagar and at the time when there was Dn. in Sangli and Kurundwad Sr. and Jr. This Deshpande karkun allowance was being given since the time said above, and even today, we are entitled. For this Hakk, Karkun was to be appointed in taluka Gad of Kurundwad State. After levying a Judi of $\frac{1}{3}$ on the above watan the appointment of the Deshpande Karkun was terminated, and since then the plttf. was entitled to the amount in respect of the Deshpande Karkun allowance. Such termination is not possible in this State. Hence the Plttf. has filed this suit.

3. Previously the subjects of this state were not entitled to file suits against the Crown or Govt. but this right of filing suits against Govt. was given by the Huzur order, dt 19-1-1946. The plttf. on 19-12-1946 has given the notice of Suit under sec.80 of C.P.C. to the Diwansahab and the Colir. of Kurundwad Jr. State by Registered post. The acknowledgment have been produced in this Suit. This suit has been instituted after the period of 2 months from the date of service of the notice.

4. When by the state order No.805 dt.22-4-1898 commuted the Deshpande Watan by levying a settlement Judi of 0-5-0 in a Rs. and the service of Deshpande were dispensed with the allowance (pay) Rs.710- per annum in respect of Deshpande Karkun falls due. The cause of suit falls when the settlement Judi was levied and every year in the month of May when the allowance is being paid.

5. The claim for court fees are as under:-

under:-

The pay of Deshpand Karkun @ Rs.71/- per annum and 15 times this shall be Rs.1,065/- and the amount for 49 years (from 1307 to 1356 Fasli 1897 to 1946 A.D.) is Rs. 3,489/-.

Totally Rs.4,554/- has been claimed the Claims for jurisdiction is the same as above.

6. Since the amount in respect of Deshpande Karkun was being paid from Yellur Treasury, This Court only has to try this suit.

7. The Pltff. prays as under:-

(A) The Pltff. should be paid the Deshpande Karkuni allowance. the yellur Treasury every year;

(B) The Deft. to give Rs.3,489/- being the pay for last 49 previous @ Rs.71/-

(C) The Cost of the suit be awarded;

(D) There should be permission to amend the plaint when necessary;

(E) Other facilities arise out of suit awarded.

The pltff files the suit as above.

Dated:- 25-2-1947. Sd/-x.x.x.

I Pltff. Narayan Deorao Deshpande residing at the Hosur Belgaum State on Solemn affirmation that the information given above is true to my knowledge.

Sd/-x.x.x.

True Translation.

1-3

This is a suit for an injunction directing Government to pay annually to the plaintiff Rs.71 as "Deshpande Karkuni Hak" and for arrears.

The suit was originally filed in the Court of First Class Sub-Judge Kurundwad Junior State in 1946 after merger, the State of Bombay was impleaded in the suit as defendant. The suit is defensible. The defence of the suit may be sanctioned on the lines of the accompanying brief.

Dec.
4110

ADR:— The suit may be defended on the lines of the appended brief.

R.R. 18/10

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY
19 OCT 1950

x
Secy RD. SO
H/x



Recd. on
21/10/50

19330

A25-10-50

In the Court of Civil Judge, Senior Division
at Belgaum.

1. Narayan Dévarao Deshapande. Plaintiff.

vs.

1. Province of Bombay. Defendant.

Herein the Written Statement on behalf of the Defendant
(Province of Bombay) is as follows :-

1. This Defendant denies the plaintiff's suit in toto.

2. The plaintiff admits in para 3 of the plaint that the right to sue the State Government was for the first time conferred on the subjects in 1946. Till that time no suits could be filed against the State Government. The order giving such right to file a suit, is not retrospective in operation nor can it have any retrospective effect. Plaintiff's cause of action, if any, arose even according to his own pleadings, long ago in 1946. The Civil Court, therefore, has no jurisdiction to try this suit.

3. The cause of action for the plaintiff arose in 1898 when the Karkuni Bab was stopped, on the commutation of the plaintiff's Deshapande Watan. The right to receive an annual allowance is admittedly a periodically recurring right and a suit for the establishment of such a recurring right is governed by Article 131 of Schedule I to the Limitation Act. The suit is therefore barred by limitation. The plaintiff's suit is also barred by limitation even assuming that the starting point in such suit is the date of the express repudiation of the claim. The Plaintiff's claim ^{was} ~~having been~~ rejected by the Diwan in 1919 and ^{The decision} ~~which~~ was confirmed by the Chief of the Kurandwad Junior State in 1925. In any case the plaintiff's claim is time barred.

4. Plaintiff's watan was commuted by levying a settlement judi of 0-5-0 in a rupee and the services appertaining to the watan were dispensed with. Since the service in question were dispensed with, the plaintiff or his predecessors..

predecessors were not required to appoint any clerk in their behalf for maintaining the accounts. The payment of Rs. 71/- therefore, for the clerical services could no longer be continued - it being an extra amount paid by the State for the services of the Karkun appointed by them. Since such services were terminated, plaintiff can have no valid claim for the payment on account of that service. The claim of the plaintiff therefore is misconceived and ~~therefore~~ not tenable.

5. This Defendant (Province of Bombay) the successor of ^{Sauji} the State, cannot be responsible for any act done by the Kurandwad Junior State unless the successor Government has under-taken or accepted any such liability by the agreement of the merger between the State and the Province of Bombay. No such liability has been under-taken or accepted by this Government under the terms of the agreement of the merger. The plaintiff has therefore no cause of action against this Defendant.

6. ^{Without prejudice to the above contentions raised} This defendant adopts the contentions ^{on merits} ~~given~~ in the Written Statement already filed by the Kurandwad Junior State.

For these reasons the plaintiffs suit should be dismissed with costs.

Belgaum.
Date.

District Government Pleader,
Belgaum.

I, District Government Pleader,
Belgaum do hereby solemnly affirm that what is stated in the above mentioned paras from 1 to 6 is true to the information obtained and believed to be true.

Belgaum.
date.

District Government Pleader,
Belgaum.

दि. का. नं ७८

१९४७/४८

मे. दि. जल. गो. दे. नु. जू. स्टेट मांचकोटित

१ नारायण देवराव देहापांडे, अंबगांव - वादी

वि.

१ कुल देवाड जूनिमर स्टेट, — प्रतिवादी.

दावा. नं. ४५५४-०-०

यात प्रतिवादीची कमीत रवाली लिहणे प्रमाणे-

१ वादीचा दावा कायदेशीर व स्वर प्रकारचा नाही त्यास
प्रतिवादी संपूर्ण इनकार करील.

२ वादी हा या संस्थावालीत एक परगणे बलनदर देहापांडे
आहे हे कबूल आहे पण त्याने ज्या कारकुनी हक्काचे
पगारा बदल हा दावा मागला आहे तो हक्क त्याने नंतर
हक्कांत समाविष्ट होता हे आपोआप कबूल नाही तो हक्क
कधीस असून त्याचा समावेश त्याचा हितर कधीस हक्कांत
होता हे त्याने प्रथम साबित करणे जरूर आहे.

३ कारकुनी हक्काबद्दल पगार हार ७१ रुपयाचा रकम कोर्टास
भगार त्याचे जडिलांस संस्थावा कडून दिली जात होती
ती देहापांडे हक्कापैकी नसून तिचा समावेश कमीत हक्कांत
करून हा दावा कोर्टात मागला आहे तो चाळणार नाही

४ प्राचीन काळी देहापांडे हेसाहे नगरे त्रिकांवर ता. लू. का. चो
जमाबंदी व जवळ पडल्यास गांव गल्यात कि कमी जास्तीची
कामे करण्याची जमाबंदारी असून कारण हे केवळ गांवांत बलनदर
असल्याने त्यांनी मागितले गांवचा अंदाजसहीत व जमाबंदीच्या
संबंधी नोंद घेतली आहे ती नोंद नकार करून नसून त्यावरून काय

महान त्याच्या बहुतेक लोकां कांही रक्कम दर साल सर्व कारांसा
दयाजी लागत असते. वकील रक्कम त्यांना गांवचे बाबतले
कारां कुन नमला जाला असल्या गांवावर कर. वसवून त्या
कारां कुन हि रक्कम सरकारा देहावांत कारां कुन स्वच
बहुता म्हणून वतनदार देहापांड यांचे गांव स्वच पंडत
असा. बहुता ही रक्कम देहापांड गीरीच्या हक्काबहुता नाहि.
सबब सेंटलमेंट जुडी वसाविले नंतर सर्वजण परभार,
कारां कुनची कामे खालेन हिमन नमून वसत येव
छावत. त्यामुळे वादी देहापांड यांचे बहुता कारां कुन
नमून येण्याची अवकाश मिळालेन राहिल्याने त्यांजबहुता
लोकां दर साल जी रक्कम त्यांचे गांव स्वच पंडत असते
ती मागण्याचा हक्क राहिला नाहि.

५ संस्थानाने जी सेंटलमेंट जुडी वसाविली आहे ती
जस्त देहापांड गीरी जमीनीवर वसाविली आहे,
हक्कांनंतर वसाविलेली नाहि सबब सेंटलमेंट जुडी
वसाविल्याने ५१ रुपये दर साल मिळणेचा आपला
कायम आहे असे जे वादीचे म्हणणे आहे ते साफरुकीचे
आहे.

६ बहुताचे असलेले कारां कुनची नोदरी वकील
होत्याने वादीस कारां कुनी हक्काबहुता ११ रु दर साल
मिळणे जरूर आहे असे वादी म्हणतो ते प्रतीवादीस प्रुकीच
नवते नाहि. कारां कुनी नोदरी बंद केले नंतर लोकां कुन
पगाराची रक्कम मागणेचा हक्क वादीस असत
नाही.

७ वादीच्या देहापांड वतनाच्या व हक्काच्या बाबती
मिहोडा मुलू खाल संशुकी संस्थानांत व बहुता देहाड
मिहोडा मध्ये असून त्यांचे बहुता कारां कुनी हक्काची

१२०० म. वादीर २२ साल भिन्न ल मसेल बगैरे
मजबूर वादीन दावा आपस नमूद केला सोई
आधी आमंडास माहिती नाही यदा कदा चाल
ले मजबूर खरा असला तरी त्यामुळे काही न
पगाराची रक्कम देणे या संस्थानावरचं धन कारक
नाही.

(वादीचे वडील देवराव यांनी या बाबतीचा आपणा
भदर सात कारकून कारकून पगार भिन्न बंदुलया
पुनी काम आज हे न्यायवेळ हात. या कामी वादीचे
वडिलांनी वेळोवेळी हजर केले सर्व कागदपत्र
पाहून व पुरावा घेऊन तसेच सर्व तक्रारी घेऊन
वेचून हो ~~कराव~~ फासाल ७०००० ची रक्कम
मागता येत नाही असं ठराव न. कारकारी सोई
यांनी कां. जा. नं. ५५४० तक्र. २८ नोव्हेंबर १९२२
केला यावर वादीचे वडिलांनी श्री मंत दुपूर
यांचेकडे अफीक हो नेले त्यात कारकारी सोई यांचा ठराव
ता. २९ जून १९२५ रोजी कायम करण्यांत आला. व
अपॉल कोर्टांत दाखल्यात आले. यांतलं कायस
वजाती हो दावा वादीन आणता आता हे.
२ दाव्यांनी फुडं पगार मागणीची बाब कवळ सरकार
वरिष्ठ मागणी स्वरूपाची असून ती दिवाणी कोर्टाचे कक्षत
येत नाही. श्री मंत दुपूर यांनी सरकारवर

दावा करण्याची परवानगी ला. १८/१-१४'६ रोजी
दिली असली तरी त्यास नसल्याने हा दावा चालणार
नाही.

१० दिवायें अशा प्रकारचा दावा चालल्यास
जलम. ४ व जलम याचा कांही नसल्याने दिवानी
कोर्टात हा दावा चालेल नाहीं बाहेर त्या अदालत
अखेर लें सटोफ्री कोर्ट जेलाले नाहीं.

~~११ वादीचे हा दावा निष्कारण असल्याने~~

११ वादीचे दाव्यास मुदलोस प्रतीबंध आहे.

१२ वादीने हा दावा निष्कारण असल्याने ला. १८
होवून प्रती वादीचा कोर्ट स्वचे वादी अदालत
मिनावा येणें प्रमाणे कायद्याचा विचार
व्हावा. या. कांमी. प्रती वादी लफ्फे जे कागद
पत्र हजर करणेचे आहेत त्यांच्या सही दिव्याची
न लफ्फा मिनावांचे लें मागावून हजर
करण्याची परवानगी असावी.

ला. सही.
१-१२-४७

11

No. 18476
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 1950.

30th Dec.

Belgaum
Subject:- Civil Suit No. 126 of 1949

MEMORANDUM.

With reference to his letter No. J. 457 dated the
18th Dec. 1950 forwarding a draft written
statement in the suit noted above for approval, the
District Government Pleader, is informed that two copies
of the revised draft are forwarded herewith.
approved

For
For Remembrancer of Legal Affairs.

To

The District Government Pleader, *Belgaum*

BM.
20.3.

Sub to for sig

27/12

H. P. S.

*Issued
20/12*

At Suits :
Belgaum.

For an injunction directing Government to pay annually to the Plaintiff Rs. 71 as Deshapande-Karkuni Hak and for arrears. *W*

13219

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 1024. *✓*

Bombay Castle, 16th January 1951.

Letter from the Collector of Belgaum No. L.A.W. 869, dated the 1st July 1950—Forwarding

31 IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.
Civil Suit No. 12G of 1949.

Narayan Devarao Deshapande ... Plaintiff; noted in the margin;
versus
The State of Bombay ... Defendant *W* and requesting sanction to its defence.

Memorandum to the District Government Pleader, Belgaum, No. 14781, dated the 25th October 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD

P. M. LAD,
Secretary to Government.

K Leg H 184—1

Original

[P.T.O.]

Issued
Jan 30 13

To

- The Revenue Department,
- The Collector of Belgaum,
- The District Government Pleader, Belgaum (with two copies of the brief).

* With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Sahel. after issue
File S. Belgaum / 51

31/3
1864

31-3.

S Belgaum / 7
10-11-3/4

15-3X

BELGAUM CIVIL SUIT No. 126 of 1949.

Chronological Statement of Facts.

1. This is a suit for an injunction directing Government to pay annually to the plaintiff Rs. 71 as "Deshpande Karkuni Hak" and for arrears of 49 years.

2. Plaintiff's ancestors were Deshpande Paragana Watandars of Kurundwad Junior State and were holders of Deshpande Watan lands and other cash allowances including the Karkunibab of Rs. 71 in question. These Deshpandes used to appoint a clerk on their behalf, for maintaining accounts etc. in the Yellur Taluka of the State and to receive in return Rs. 71 per year from the State.

3. In 1898, the Deshpande Watans in the State were commuted by a levy of settlement Judi of five annas in a rupee and by permanently dispensing with the services of these Paragana Watandars. In the same year Karkuni services, were dispensed with.

4. In the year 1916, the plaintiff's father requested the Mamlatdar of Yellur Taluka by a Yudi that the arrears in respect of "Karkuni Bab" from the year 1307 to 1325 may be paid to him or it may be adjusted in the accounts between the State Government and the plaintiff's father. The Mamlatdar of Yellur refused the request of the plaintiff's father. He, thereupon preferred an appeal to the State—Karbhari—who under his Ka. Ju. No. 4540/1329 confirmed the decision of the Mamlatdar on 28th November 1919 holding that Karkuni Bab was neither a Hak nor cash allowance, but an extra amount paid by the State to the Deshpande for Karkuni services. Being aggrieved by this order the plaintiff's father, submitted an application to the Chief of Kurundwad Junior State, but it was rejected on 27th June 1925 under H. J. No. 44/1335.

File No. 3 p. 1.

5. On 19th December 1946, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 25th February 1947 he filed this suit in the Court of the First Class Sub-Judge, Kurundwad Junior State and after merger, the suit was transferred to the Court of Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. *Bar of Limitation.*—The plaintiff seeks, in this suit, to establish his right to receive the Karkunibab of Rs. 71 per year from the Government. A right to receive an annual allowance paid by Government is a periodically recurring right (*vide* Narendra Singji v. Udisingji 49 Bom. L. R. 318).

A suit for the establishment of such right is governed by article 131 of Schedule I to the Limitation Act, 1877 or 1908. District Government Pleader should verify whether the Limitation Act of 1877 or 1908 was adopted in the Kurundwad Junior State. Plaintiff's enjoyment or right to receive the Karkunibab ceased in 1898 when the commutation of Watans was effected in the State. The present suit is filed in 1947. It is, therefore, time-barred under Article 131 of Schedule I to the Limitation Act, 1877 or 1908. Even if it be assumed that the starting point for such a suit is the date of express repudiation of the claim, it can, still, be urged that the plaintiff's claim is barred under the same article. The final order, rejecting the plaintiff's claim for Karkuni bab, was passed in 1925. The present suit is not filed within twelve years from the date of order. The plaintiff can contend that right to sue the State Government in the Civil Courts of the State was conferred only on 19th January 1946; and that the suit is in time having been filed within twelve years from that date. This contention is not tenable. Rights, once barred, can only be revived by an enabling legislation in this behalf. Granting of right to sue the State Government cannot mean extending the periods prescribed for filing suits. It should, therefore, be contended that the plaintiff's claim to Karkunibab as well as arrears is barred under article 131 of the Schedule I to the Limitation Act, 1877 or 1908.

2. The next question is whether, irrespective of the objection as regards limitation, the plaintiff has any right to sue the Government of Bombay on the cause of action stated in the plaint. The cause of action, according to him arose in 1898 when the commutation of watans was effected. It is admitted in the plaint that at that date the subjects of the State had no right to sue the State Government in the Civil Courts of the State and that such right was conferred only on 19th January 1946, when Huzur order to that effect was passed. Obviously, however, such order could not operate with retrospective effect so as to entitle the plaintiff to sue the State Government in respect of the cause of action which occurred prior to the relevant date unless the order itself expressly provides that it is to have retrospective effect. If, therefore, the plaintiff had no right to sue the State Government at the date of the cause of action, it cannot sue the successor Government in respect of the same cause of action. The District Government Pleader is requested to obtain a copy of the said order referred to by the plaintiff and forward it to this office for further consideration if necessary.

3. Secondly, even assuming that the order in question entitles the plaintiff to sue the State Government in respect of the Cause of action which arose previously it can still be contended that the successor Government cannot be sued for the illegal acts committed by the ruler of the State or its

officers. In other words, if the order, rejecting the plaintiff's claim to Karkunibab is an illegal order, of that order against the State of Bombay. It is an established principle that upon a cession of territory, an inhabitant of a ceded territory can make good in the Municipal Courts established by the new sovereign only such rights as that new sovereign has recognised and not the rights enjoyed under the rule of his predecessors (Vajesingji v. Secretary of State 26 Bom. L.R. 1143; Sayad Asrat Ahmed v. Darga Committee of Ajmer 49 Bom. L.R. p. 235). Therefore, assuming that order rejecting the plaintiff's claim is illegal, the plaintiff has no right to bring this action against the successor of the ruler unless under the agreement of merger, the State's liability for such acts has been undertaken by this Government.

4. *Merits.*—The plaintiff has no case on merits. The plaintiff's case seems to be that Karkunibab was a Huj (Right) which his predecessors—entitled were long enjoying and the State had no right to discontinue the same. The plaintiff relies on Terji Patrak Hakk Jamindar for 1257 fasali and same extracts from Huzur Barnishi and copies of the Taluka accounts for the years 1268 to 1307. It may be seen from those papers that Rs. 71 were paid to Deshpandes as pay for the Karkuni services rendered by them.

5. Formerly in Maratha, and Mahomedan rules, the Desais and Deshpandes were responsible for the maintenance of Revenue accounts of a Taluka and if necessary, of villages. It will be seen from the Patrak that for the services rendered by the Deshpandes in maintaining the village accounts, the Deshpandes were paid by a levy of a special cess known as Karkunibab, on all villages under their charge. Taluka accounts for the years 1268, 1270 to 1307 produced in this case refer to the payment of Rs. 71 but as "Jadid Karkuni Bab" meaning thereby that this Karkuni had was not a grant contemporaneous with or similar to Deshpande Haks but a special arrangement made by the State later on for compensating the Deshpandes for these services. After the introduction of survey settlement and fixation of land revenue and taking over the work of revenue collections by the State, all these pattees, including Karkuni Bab were abolished. The plaintiff is not now entitled to receive this Bab as the services of Deshpande Karkuns have been terminated long ago. It should, therefore, be contended that Karkunibab was not Hak and state was justified in discontinuing the payment of Rs. 71.

6. The District Government Pleader should ascertain from the revenue authorities whether Pensions Act (No. XXIII of 1871) or any other legislation of the like nature was adopted in the Kurundwad Junior State. If it was, so, he should raise the necessary defences in the case. For these reasons, it should be contended that the suit fails and should be dismissed with costs.

To

The Collector of Belgaum.

Subject:- Spl. Civil Suit No.126 of 1949., on the file of the
Civil Judge, S.Dn., Belgaum.
Narayan Devarao Deshpande of Hosur-Belgaum.
Vs.
The Province of Bombay.

S I R,

E
With reference to the subject noted above and in continu-
-ation of this office No. J-37 of 1952, dated 23rd January 1952,
I have the honour to report as follows:-

The learned Civil Judge, S.Dn., declared the judgment in
the above mentioned suit on 21.1.1952 as already intimated. The
decision is wholly against Government. The question is whether
an appeal should be preferred against the same.

The issues for trial are as under:-

- 1) Whether Plaintiff proves that his family right of appointing a
Clerk at Rs. 71/-, was Kadim and co-existing with his Deshpande
right?
- 2) Whether Plaintiff proves that such right, can be exercised by
his family even after the communication of Deshpande services
and the dispensing with, of the appointment of a Clerk?
- 3) Whether the decisions of the former State in the inquiry start-
-ed by Plaintiff's father, in 1919 are not binding upon him?
- 4) Whether the former state order of 1946, giving a right to -
Public, to file a suit against the state is retrospective?
- 5) If not, is Plaintiff's present suit tenable?
- 6) Whether the suit is barred under Section 4 of Revenue Jurisdi-
-ction Act and Section 8 of Pensions Act?
- 7) Whether this Court has jurisdiction to try this suit as con-
-tended in para 2 of W.S. Exhibit No.25?
- 8) Whether Plaintiff's claim is within time as contended in para
3 of W.S. Ex. 25?
- 9) Whether the Bombay State is liable to Plaintiff in view of the
terms of Merger agreement, as contended in para 5 of W.S., --
Exhibit No.25?
- 10) Does this suit disclose any cause of action?
- 11) Whether Plaintiff is entitled to the mandatory injunction?

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Sub No. 4/2/52
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claimed?

12) What is due to Plaintiff in respect of Clerk's pay?

13) To what reliefs, is Plaintiff entitled?

In my opinion, the suit is of public importance and an appeal may be preferred against ~~and~~ the judgment and decree passed by Shri. N.V. Ransubhe, Civil Judge, S.Dn., Belgaum, on 21.1.1952, for the following among other grounds:-

In para 1, 2 and 3 of his judgment, the learned Judge has narrated the history of Watan Lands and Cash Allowances granted by Mohamden Kings, to the Plaintiff's family, before the advent of British Rule in India. The Judge has wrongly assumed this part of the case without any evidence on behalf of the Plaintiff, and has prejudicially decided the case in favour of the Plaintiff, on the above basis. It is contended by the Government that the Kurundwad Junior State had committed the Plaintiff's Watans in the State in 1898 by levy of settlement ~~Jud~~ of Annas 5 in a Ruppe, and by permanently dispensing with the services of these Deshpande Paragana -- Watan-dars. Accordingly the Karkuni services were also dispensed with. This aspect of the Deft's contention is entirely misconceived in the judgment para 7 to 10 on issues Nos 1 to 3. The judge is wrong in holding that Exhibits 41 and 63 prove that the Deshpande Plaintiff had a right for the Karkuni ^{only} Bab Hakka. This Plaintiff's contention on merits amounts to pay for the Karkuni services rendered by him. From the papers relied by him, it is nowhere said that this was his right. But the papers show that it was only the pay claimed of a Karkun -- whenever he has rendered services.

On issue No. 4 however, the judge has rightly held that the notification issued in 1946 by the Kurundwad Junior State was not retrospective. On issue ~~Nos~~ No. 5 however, the Judge has wrongly said that the order passed by the Raja of Kurundwad State were ultra vires. ~~There~~ Therefore the Plaintiff is not required to set them aside. This view is entirely wrong. The Plaintiff cannot succeed in the suit unless ^{the} the order to set aside on which ~~the~~ basis the cause of action for the suit.

31. 2

Issue No. 6 was not argued by the Government Pleader for want of necessary information from the Kurundwad Junior State ~~State~~

Issue No.7:- The Judge has entirely misconceived the contention of the Government, that the Court of the Civil Judge, in Bombay State, had no jurisdiction to try the present Suit. The Contention of the Government in this ~~connection~~ connection was that the Plaintiff alleges that the order of the Kurundwad Junior State, in stopping to pay Karkuni Bab to the Plaintiff was illegal. The Plaintiff has no right to seek any relief in respect of that order against the State of Bombay. He has entirely ignored the principles in 26 Bombay Law Reporter 1143 and 49 Bombay Law -- Reporter 235.

This is suit for an injunction directing Government of -- Bombay to pay annually to the Plaintiff Rs. 71/- as Deshpande Karkuni Bab, and for arrears of 49 years. The Government has contended that the suit was time barred as the alleged right to receive the allowance annually from the Government is a periodically recurring right. (Vide Narendrasingji Vs. Udisingji, 49 Bombay - Law Reporter page 318.) The Judge is wrong in saying that article 131 of Limitation Act will apply for Plaintiff's claim for arrears of allowance within 12 years before suit. He has also relied ~~in~~ in this connection upon 12 Bombay Law Reporter 157, and A.I.R. 1935, Calcutta 333. The Judge has ignored the fact that the Plff. has based his suit on the state Huzur Mulki (Out-ward No.805 , , dated 22.4.1898.) This is the date when the cause of action is first arisen, and it cannot be said that it was not continuous. The limitation will have to be considered from the original -- cause of action and not another and fresh cause cause of action under article 131 of the Limitation Act on issue no 8.

On issue ~~No~~ No. 9 , the Judge has held in paragraph 1 that the ~~the~~ right of the Plaintiff illegally stopped subsists in Plaintiff's family till 1946, and said that was practically a charge to the State Government, which has stepped into the shoes of the Kurundwad Junior State, and has further held that the Bomb State acquire the assets as well as the liabilities of the --- Kurundwad State. This aspect of the Judgment is absolutely besides the contentions of the Government, in so far as it says that the

successor Government can not successfully be sued by the subjects of the previous Government, when they allege that the acts of the previous Government were illegal. He has further wrongly based his conclusion in the light of the equity and conscience. The Plaintiff has not in fact produced either his Sanad previous to the Kurundwad Junior State regarding his rights alleged by him in the other states and in the Indragiri Division though asked for, he has not produced the sanad. (See his statement and cross-examination.) In fact in cross-examination the Plaintiff has admitted that in British Sanad, Kurundwad is not mentioned, in cash allowances. He has also said that he will produce that Sanad, in fact he has not produced at all.

For these among other grounds, the Government may file an appeal in my opinion against the judgment and decree of the Lower Court. *certified copies will be sent as soon as received from the court.*

Lab M. M.
I/C. District Government Pleader,
BELGAUM.

Copy forwarded with compliments to the ~~Remember~~
of Legal Affairs, Bombay, for information.

Lab M. M.
I/C. District Government Pleader,
BELGAUM.

33 5/4
Received on:- 8-8-1949

Registered on:- 11-8-1949

Decided On:- 21-1-1952

Duration:-
U

In the Court of the Civil Judge, S.Dn., at Belgaum.

Special Suit No. 126 of 1949

Shri N.D.Joshi
Pleader.

1. Narayan Devarao : Deshapande, caste
Brahmin, Occ. Jamedari, Age 51 of
Hosur, Belgaum.

... .. Plff

Against.

Shri M.M.Lad
Govt.Pleader.

1. The Province of Bombay since Kurandwad
Junior State is merged in and forms part
of the Bombay Province

... .. Deft.

Claim Rs. 4,554-0-0

The plff sues for a mandatory injunction directing the Defendant to pay Rs. 71/- to plff for the sake of Deshapande Karkuni rights, for the recovery of arrears of Rs.3,489/- for the last 49 years and costs from Defendant alleging that plff is a Paragan Watandar Deshapande in Kurandwad Junior State, that his ancestor got grants of Deshapande Watan lands and cash allowances, that the said grant of plff's family was the Kafam grant, that among the cash allowances, plaintiff's family was getting Rs.71/- for Deshapande Karkuni rights that the said right of plff's family is entered in the Mahali Jamidar Hakkadar records, dated Fasali 1257 of Kurandwad Junior State, that plff's family was asked by the State to appoint a clerk on its behalf to do the clerk's work, that accordingly, plaintiff's family appointed a clerk at Yellur Taluka office for the sake of maintaining accounts, that this clerk used to get the Karkuni Bab of Rs.71/- from the State, that according to State Order No. 805 dated 22-4-1898, Judi of Annas 5 in a ruppee was levied on Deshapande Watan lands and the ~~services~~ were discontinued, that after the services were discontinued, plaintiff's family was entitled to get Rs.71/-

per month but did not get it, that arrears of 49 years are due from Defendant, that plff's family is getting Rs. 71/- for the Karkuni Bab from British Union, Sangli State, and Kurandwad Senior State, that ~~the payment of Rs. 71/-~~ in the British Union, the Sangli State and Kurandwad Senior State, the payment of Rs. 71/- is continued to Plaintiff's family though services were discontinued on the levy of the Judi similarly, that on 19-1-1946, the Kurandwad Junior State granted a right to its state subjects to file a suit against the State, that on 19-12-1946, plaintiff served a notice on the Diwan and the Collector of Kurandwad Junior State, that the cause of action arose on the date when the payment was stopped and for arrears in the month of May of each year.

Defendant- Kurandwad State filed its Written Statement Ex. No. 9, after the merger of the State into Bombay State, the Bombay Government has filed a Written Statement, Ex. 25. The Defendant contends that the order of 1946 conferring a right on the subjects to file a suit against Government, is not retrospective, that the cause of action arose long ago in 1946, that this court has no jurisdiction to try this suit, that both the claims of plff are time barred, that the cause of action for the first claim of plaintiff arose in 1925 and that of the second claim arose in each respective year prior to 1946, that the plaintiff's watan was commuted by levying a settlement of Judi of Annas 5 in a Rupee and the services appertaining to the watan were dispensed with, that plff's family was not required to appoint a clerk for maintaining accounts, that plff has no valid claim for the payment on account of the stoppages of service, that the State of Bombay is not responsible for any act done by the Kurandwad Junior State, that the Bombay State has not undertaken the liability to pay the Karkuni Bab, that the Bombay State is not responsible, that the suit should be dismissed with costs.

25/37

The issues for the trail are as under(vide Ex.27)

1. Whether plff proves that his family right of appointing a clerk at Rs. 71/- was Fadim and co-existing with his Deshapande right?
2. Whether plff proves that such right, can be exercised by his family even after the communication of Deshapande services and the dispensing with, of the appointment of a clerk ?
3. Whether the decisions of the former State in the inquiry started by plaintiff's father in 1949 are not binding upon him ?
4. Whether the former state order of 1946, giving a right to public, to file a suit against the state in retrospective ?
5. If not, is plaintiff's present suit tenable ?
6. Whether the suit is barred under section 4 of Revenue Jurisdiction Act and section 4 of Pensions Act ?
7. Whether this court has jurisdiction to try this suit as contended in para 2 of W.S. exhibit No. 25 ?
8. Whether plaintiff's claim is within time as contended in para 3 of W.S. Ex. 25 ?
9. Whether the Bombay State is liable to plaintiff in view of the terms of merger agreement, as contended in para 5 of W.S., Exhibit No. 25 ?
10. Does the suit disclose any cause of action ?
11. Whether plaintiff is entitled to the mandatory injunction claimed?
12. What is due to plff in respect of Clerk's pay ?
13. To what reliefs, is plaintiff entitled?

My findings are:-

- 1). Yes
- 2). Yes
- 3). Yes
- 4). No
- 5). Yes
- 6). Need not be tried

7. Yes.
8. Yes.
9. Yes.
10. Yes.
11. Yes.
12. Rs.852/-
13. As per Order.

REASONS.

1. Plaintiff's family is a paragane Watandar of Belgaum Ajjamnagar. The Mohemmadan Kings granted Wtan Lands and - Cash Allowances to plaintiff's family long before the advent of British Rule in India. After the creation of Sangli and Kurandwad Stated by the Peswas, some portion of this - Ajjamnagar went into the jurisdiction of Sangli State and Kurandwad State, and some portion remained in British India. So the plff's watan was thus distributed into Sangli State, Kurandwad State and British State. The Kurandwad State was divided into two parts in 1855 named as Kurandwad Senior State and Kurandwad Junior State.

2. Ajjamnagar has been described in the Karnatak - Gazettee on page 376 relating to Belgaum, as a territory of Belgaum and its adjacent villages.

3. This paragane watan was granted to the family of - plaintiff for performing the Karkuni Service to the State. The Karkuni service consisted of making the recovery of Gavvasul and of maintaining the Accounts. A choice was - given to the members of the plaintiff's family either to work as Karkuns personally or to depute some persons to - work as clerks on their behalf. Some amount was required to be paid by each State to the family of plff for the - sake of this service was a part of the whole cash allowance that was granted as an Inam to the family of plff along - with the lands. In short, some lands and cash allowance - including this Karkuni Bab constituted a Paragane Watan Inam

27

to the family of plff before the advent of British Rule.

4. The case of plff is briefly this:-

His family was getting Rs. 71/- from the Kurandwad Junior State, with which we are concerned in this suit. This amount of Rs. 71/- which was a part of the grant of cash allowance, was being paid for the sake of Karkuni-services rendered by the family of plff to the Kurandwad Senior State. Similarly plff's family was and is getting Rs.40/- as Karkuni Bab from the Sangli State. The family of plff was and is getting some amount from British India and Indian Union by way of Karkuni Bab. In 1898, after the introduction of Gordon Settlement in Sangli Junior State, the services were stopped. The services were stopped in British India and in Sangli State similarly in 1878 and 1889 respectively. In spite of this stoppage of services plaintiff's family was and is getting the amounts for the sake of the Karkuni Bab from British India and Indian Union, Sangli State and Kurandwad Senior State. But his complaint is that since 1898, the Kurandwad Junior State stopped paying Rs.71/- to this family permanently, on the ground that Judi of Rs.5/- in Rupee was levied by the State on the Watan Lands and Cash allowances and the services were thereafter discontinued. Plff agitated the matter before the Karbhari in 1918, but the Karbhari rejected the request of plff (vide Order, Exhibit No. 63 dated 1919) Plff then approached His Highness the Raja of Kurandwad State. But the Raja of Kurandwad State rejected the request of plff.

5. The Kurandwad Junior State conferred a right on its subjects to file suits against the State in 1946 (Vide Kurandwad Junior State Gazette; page 81, dated 19-1-1946. After this notification, plff served a Notice on the State on 19-12-1946 under section 80 C.P.C. and filed the suit on 25-2-1947 in the court of Kurandwad State. After the merger of Kurandwad State, into the

Bombay State, in 1948, this suit was transferred to this court for trial. In this suit, plff seeks a mandatory injunction directing the Bombay State, which stepped in place of the former Kurandwad State, to pay Rs.71/- per year as ~~Kurandwad~~ Karkuni Bab to him. Plff further seeks the recovery of Rs. 3489 as the arrears of the las 49 years.

6. The Kurandwad Junior State filed one Written Statement at Exhibit No. 9. The Bombay Government has also filed another Written Statement at Exhibit No. 25. The Bombay Government contends that plff's alleged Karkuni Bab is not a Kadim Right, that it cannot be exercised after the communication of Deshapande Services, that the decisions given by the State Karbhari and His Highness of Kurandwad Junior State in 1919 and 1925 respectively are binding on plff, that the Notification of 1946 issued by the Kurandwad Junior State is not retrospective, that the suit is barred under section 4 of the Revenue Jurisdiction Act, and section 4 of the Pensions Act, that this court has no jurisdiction to try this suit, that the claim of the plaintiff is time-barred and that the Bombay Government is not liable to pay the Karkuni Bab as it has not taken the liabilities of Kurandwad Junior State on its merger.

7. Issues No.s 1 to 3:- Plaintiff was examined at Exhibit 40. No evidence was led by Defendant. Plff, Ex.40, alleges that this Paragane Watan granted by the Mogul King consisted of some lands and cash allowance and that this paragane watan was Kadim in character. In order to prove this fact, he has produced a Dumala Akar Patra(Ex.41). It is a Statement produced before the Inam commission by the Ruler of the Kurandwad State showing the alienations that existed prior to the creation of Kurandwad State. It is dated 1266 Fasli. In this Akar Pat ra, the lands and the cash allowance pertaining to the Paraganan Watan of Plaintiff's family are described. The Karkuni Bab of Rs.71/- is made up of the following items

9X

entered against the names of each village at which place the Deshapande Karkuni Service was required to be rendered by plff's family.

Villages	Amount	Page of Dumala Akar Patra
Yellur	15-0-0	1
Mazgaon	5-0-0	5
June-Belgaum	3-0-0	9
Vadgaon	25-0-0	11
Hangarge	9-0-0	12
Bekanhalli	4-0-0	14
Tarihal	10-0-0	16
	71-0-0	

Exhibit No.42 is an extract of Petha Khata Utara of 1940 of Shahapur belonging to Sangli State. In this extract, Rs.40/- are shown as Karkuni Bab to be paid to plaintiff's family. Ex.43 is an extract of Petha Khata of Angol, dated 1946 relating to Kurandwad Senior State in which Rs.10/- are shown as Karkuni Bab to be paid to plaintiff(Ex.40) that the Karkuni Bab is not separately shown in the Cash Allowance that is being paid the Indain Union.

8.This Dumala Patra(Ex.41) establishes the Kadim Rights of Plff's family to recover Rs.71/- as Karkuni Bab from the Kurandwad Junior State. The Kurandwad Junior State was created subsequent to this Pargani Watan Grant to plff's family and hence before the creation of the Kurandwad State, its Ruler showed the old liabilities upon his State. There is an evidence that after the formation of Kurandwad State, it was paying Rs. 71/- to plff's family by way of this Karkuni Bab upto 1898. This fact has been admitted by the State Karkhari of Kurandwad State in his Order EK. No. 63 dated 1819. It is thus evidence from Exhibits 41 and 63 that Kurandwad State Ruler got the grant of the State from the Peswa and the British Government

subject to this Kadim Rights of plff's family and was paying that Karkuni Bab in lieu of services rendered by the plff's family upto 2898. It is also specifically stated in the order of the State Karbhari (ex.63) that the payment of this Karkuni Bab of Rs.71 per year was discontinued permanently from 1898, in which year, according to the Government Settlement, Judi of Rs.5/- in a Rupee was levied on this paragane watan consisting of lands and Cabs allowance in lieu of services, which were discontinued subsequently. The State Karbhari and the Raja of Kurandwad State had held that this Karkuni Bab was not a right of the plff's family so long it continued to render the services to the State. On such reasoning, both of them stopped the payment of this Karkuni Bab to plff's family, because, according to them, the services to be exacted from the plff's family were discontinued after the levy of Judi of Rs. 5/- in a rupee.

9. The learned Government Pleader based his arguments upon the reasonings of the State Karbhari as obtained in Ex. 63. According to the learned pleader of Government, this Karkuni bab was not a right enjoyed by the plff's family by virtue of the sanad, granted to the family. In support of this fact, he draws my attention to the words "Patil Hakk" and "Jambotakr Hakk" which are described in Ex.41 under the Heading "Cash Allowance". He argues thereby that Deshapande Karkuni Bab is not similarly described as a Hakka meaning thereby a right that was enjoyed by the plff's family. The view propounded by the learned pleader of the Defendant does not appear to be correct. It is evident from the Dumala Patra, Ex.41, that the act of plaintiff's family of rendering service and receiving Rs.71/ in lieu of that service constituted a right that was enjoyed by plff's family. In the absence of such a right, Rs.71/- by way of Karkuni Bab would not have been described under the

Heading " Cash Allowance" in the Dumala Patra. The meaning of the Dumala Patra is an ancient right. This right was recognised by the State Ruler before the Inam Commission prior to the creation of the Kurandwad State. The State was, in fact, created subject to this Kadām right enjoyed by plff's family. The State had, therefore, no alternative but to accept this liability before the creation. When once this liability has been accepted by the State, it cannot escape it on any ground.

10. The ground that is alleged for escaping this liability is the levy of judi of As.5 in a ruppe on the pragana Watan of Plaintiff. A misunderstanding was created during the course of arguments by the learned pleader of defendant that a judi was levied only on the Watan lands and not on cash Allowance. This does not seem to be correct. Plff has not produced the sanad which was issued to him after the Gordon Settlement. But a copy of the sanad that was issued to all Inamadars after the introduction of the Gordon Settlement is quoted on page 223 of Watan Act by Fadnis. The second para of the sanad runs as follows:- "It is hereby declared that the said lands and cash allowances shall be continued hereditary by the British Govt. on the following conditions". One of the conditions was the payment of Judi on the said land and cash allowances. Thus it is crystal clear that the judi was levied on the whole grant and not upon its part. As a result of the levying of judi, the State or Government dispensed with the services of the Inamadars because it found it most convenient to appoint separate Officers for the administration of Accounts and to pay to those Officers out of the Judi Collections. Thus the effect was that the manual labour that was to be exacted from the Inamadars in the form of services was replaced by the payment of money to compensate the other Officers who were appointed in place of the Inamadars. The State or Government got itself compensated for the loss of the service from the Inamadars by taxing the Inamadars

in the form of judi. When such loss of services from the side of the Inamdar was compensated by the direct taxation of them, my opinion is the former status quo of the Inamdars remained in tact. The state or the Government had, therefore, no right to whittle down any of the privileges or concessions allowed to the Inamdars by virtue of the Kadim Grant. In the present case, the Kurandwad State had recognised the right of plff's family to enjoy Rs.71/- from the State Treasury by way of Karkuni Bab and had transacted that liability - by making regular payments accordingly to plff's family - up to 1898. The Kurandwad State had, therefore, no right to whittle down any term of the grant that was awarded to plff's family. In my opinion, the Kurandwad Junior State had gone out of its way to curtail or to nullify this Karkuni Bab which was the inherent right of plff's family. It had absolutely no jurisdiction to interfere with this Karkuni bab that was enjoyed by the plff's family since before its creation and that too after its acceptance by itself. The decision taken by the State Karbhari in 1919 and the Raja of Kurandwad State in 1925 was, therefore, ultra vires.

11. There is in evidence of plff which went un-challenged that his family was receiving some amounts by way of Karkuni Bab even after the Gordon Settlement, from Sangli State and Kurandwad Senior State. This fact as deposed to by plff (Ex.40) appears to be quite correct as is evidenced by the Petha Khata Extracts (Exhibits Nos. 42 and 43) of Sangli State and Kurandwad Senior State. Plaintiff's family received Rs.40/- and Rs.10/- from Sangli and Kurandwad Senior State in the year 1940 and 1946 resply. When other States were paying this Kulkarni Bab to plff's family, I do not see that the Kurandwad Junior State had any legal justification to stop it on the ground of introductory Gordon Settlement. My conclusion, therefore, is that plff was entitled to Rs. 71/- by way of Karkuni Bab from the Kurandwad Junior State and he is also entitled from the Bombay

Bombay State, and that the decisions of the State Karbhari and the Raja of Kurandwad are not binding on the plff. My findings on issues Nos. 1 to 3 are accordingly.

11. Issues No. 4 The notification issued in 1946 by the State is not retrospective. That is conceded by both pleaders before me. My finding on the fourth Issue is accordingly.

12. Issue No.5:- The orders passed by the State Karbhari and the Raja of Kurandwad State being ultra vires plff is not required to set them aside. The present suit is quite tenable. My findings on the fifth Issue is accordingly.

13. Issue No. 6:- The learned pleader for Deft does not press the points arising under the Revenue Jurisdiction Act and the Pensions Act. I hold that the above Issue need not be tried. My finding on the 6th issue is accordingly.

14. Issue No. 7:- It is contended by deft that as the cause of action for this suit arose in 1946, this court has no jurisdiction to try this suit. It is true that the cause of action arose in 1946 but first the suit filed by the plff firstly in Kurandwad Senior Atate in 1947. After the merger of that State into this District, this court had jurisdiction to try this suit. My finding on the seventh issue is accordingly.

15. Issue No.8;- It is contended by deft that the whole claim of plff is time barred as the stoppage of the payment of the Karkuni Bab took place in 1898 and the by the subsequent Order in 1919 and 1925. The learned Government Pleader quotes Art.131 of Limitation Act and argues that the time will begin to run from either 1898 or 1919 or 1925. So he means to say that the claim of plff is time barred as more than 12 years have elapsed. This is absolutely wrong. In view of section 23 of Limitation Act, this Karkuni Bab amounts to a recurring right. Plff got a right to sue the State in 1946. So under art.131 of Limitation Act, plff's claim for a mandatory injunction and his claim for 12 years' arrears of are within time. Vide Jatindra Chandra Vs. Rebatee Mohan

A.I.R. 1935 Calcutta, 333, and Sakharan Vs. Laxmy party 12 Bombay Law Reporter 157. My finding on the Eighth Issue is accordingly.

16. Issue No. 9 :- It is argued by the learned Pleader of Defendant that the Bombay State had not taken the liability of paying this Karkuni Bab to Plaintiff, after the merger of the state in the Bombay State, and hence the Bombay State is not liable for any act of the former State. The learned Pleader of the Defendant has quoted Vajesingji Vs. The Secretary of State for India., on this point. In the above case some Talukdars held leasehold rights under the Gwalior State in the territories belonging to the Gwalior State. Some Taluka of the Gwalior State, in which the Talukdars enjoyed these leasehold rights were ceded by the Gwalior State to British Government. The Talukdars while their were in the Scuidia State claimed themselves as the owners of the land s in their possession. After the cession to British Government, a dispute arose between the Talukdars and the British Government as regards the rights of the former. The British Government disputed the proprietary rights of the Talukdars. The Talukadars claim that they had such proprietary rights in the Gwalior State and subject to those rights, the British Government annexed that part of their Territory. A question arose whether the British Government by annexing their territory accepted the liability of acknowledginty the proprietaryship of those Talukdars. It was held by Their Lordships that the British Government did not annex the Territory subject to the proprietary rights of those Talukdars because they did not possess such rights. The above case does not apply to the present ~~xxxx~~ facts. In the present case, the Kurundwal d Juniro State had accepted the rights of Plaintiff's family, before its creation and had acknowledged the rights by making the payment of Karkuni Bab to Plaintiff's family. By virtue of an implied agreement before the ~~Tanna~~ Commission, the State Ruler agreed to pay this Karkuni Bab to Plaintiff's

family and had actually paid it upto 1898. The right which was stopped illegally subsisted in Plaintiff's family till 1946, when the Plaintiff got an authority to vindicate that right against that State. It was practically a charge upon the State Government created by the Ruler of the State by his agreement before the Inam Commission. The Indian Union which stepped in the shoes of the Former Kurundwad State got the State subject to this charge of Plaintiff created on the State finances. When the Bombay State assumed the administration of the Kurundwad State, it must be held that the Bombay State acquired the assets as well as the liabilities of the Kurundwad State. The Bombay State cannot be deemed to have acquired only the assets of the State without the liabilities created on the State. I do not think, therefore, that the Bombay State can escape this liability created by the virtue of the Karkuni Bab enjoyed by Plaintiff's family. The Government did not produce any document to show that the Bombay ~~State~~ Government assumed the charge of the Assets of the State only and not its liabilities. My firm ~~conviction~~ conviction is that the Bombay Government which represents the former Kurundwad State must shoulder the responsibility of paying this Deshpande Bab to Plaintiff.

17. The merger agreement between the State Ruler and the Indian Union relates to the privileges that were granted to the State Rulers by the Indian Union. That merger agreement does not throw any light on the private rights of the parties. So the liability of the Defendant is to be ascertained in the light of the principle of equity and good conscience. My finding on the Ninth Issue is accordingly.

18, Issues Nos. 10, 11, 12, & 13:- The suit discloses a good cause of action. Plaintiff is entitled to the arrears of Rs. 852/- for a period of 12 years under Art. 131 of the Limitation Act. Plaintiff is entitled to the Mandatory Injunction as sought. Plaintiff is also entitled to the Costs of this suit. My findings on Issues Nos. 10, 11, 12 & 13 are accordingly.

O R D E R.

1. It is hereby directed that Defendant should pay Rs. 71/- to Plaintiff per year in future on the 1st of April, 1952 and on the respective dates hereafter.

2. Plaintiff do recover Rs.852/- and ~~proportionate~~ proportionate costs of this suit from Defendant. The Defendant do bear his own costs.

Dated:- 21-1-1952.

Civil Judge, Senior Division,
Belgaum.

37 -

Submitted.

1. The plaintiff filed the Civil Suit No. 126 of 1949 against the State of Bombay for a mandatory injunction directing the defendant to pay Rs. 71 annually ^{as Karkuni Bab} and for recovery of arrears for the last forty-nine years. The trial court decreed the plaintiff's claim for injunction and for arrears of twelve years.

2. The D.G.P. has forwarded the judgment in the case with his opinion regarding the merits of the case.

3. This is a fit case for appeal. The lower Court's finding, that the suit is maintainable is prima facie, inconsistent and incorrect ^{in fact} of the admission on both sides that the circular of 1946 by His Highness the Rajasaheb granting the State subjects, the right of suit against Govt, was not retrospective in operation.

4. The same is the case with limitation. The article 131, ^{sub 1} is misconstrued. The cause of action for the suit arose in 1898. Limitation ~~is~~ to file a suit to establish a periodically recurring right begins from the time when the plaintiff was first refused the enjoyment of the right and any suit filed twelve years thereafter will be barred under sec. 131 Schedule 1 to the Indian Limitation Act. The case in 28 Bom. L.R. p. 633 is on all ~~points~~ ^{as} with the present case.

5. The lower court has confused the history of the Watan with the facts of the case. The contention of the defendant is that 'Karkuni bab', in suit was not watan. It was jadid grant, meaning thereby, that it was not contemporaneous with or similar to the Deshpande Haks but it was a special and temporary arrangement made by the State to compensate the Deshpandes for the additional services. The papers on record clearly mention this Karkuni Bab as Jadid grant. As it was ~~the~~ ^a Jadid grant, Rajasaheb had every right to stop it.

6. Lastly, ~~(twelve years' arrears)~~ ^{allowed} the Court has ~~gone~~ ^{gone} to the plaintiff's ~~twelve years' arrears~~ ^{only}. At the most he will be entitled to three years' arrears ^{only} and not twelve. It is therefore submitted that this is a fit case for appeal.

Plg
1816

Assistant (ms) This is a suit for an injunction.

directing Court. to pay annually to the P. & A.
sum of Rs. 71 as Deshpande Karkuni Bab,
of for arrears of 49 years before the Suit.
Facts giving rise to this Suit are at
Slip A. Court has awarded the P. &
arrears for 12 years before the
Suit & has also directed Court. to
pay Rs. 71 p. a. to P. & in future. I
agree with the view expressed
above that this is a fit case for
appeal. Sanction to pay for an
appeal may therefore be accorded
as requested by the D. G. P.

La/
16-2.

Add. Secy. I agree. an appeal order filed
18/2

Secy R. D. D. 18/2

x No. 2634. of
18-2-1952

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.

18 FEB 1952

M 18/2/52

3973
Suits:
Belgaum.

For an injunction directing
Government to pay annually to
the Plaintiff Rs. 71 as
Deshpande Karkuni Hak and for
arrears.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 2917.
Bombay Castle, 22nd February 1952.

Read Government Resolution, Legal Department No. 1024,
dated the 16th January 1951.

Endorsement from the District Government Pleader, Belgaum
dated the 23rd January 1952 forwarding a copy of his letter No.
----- J 37 of 1952 of
In the Court of the Civil Judge (Senior : even date stating
Division) Belgaum. : that the suit
: noted in the
Civil Suit No. 126 of 1949. : margin was decid-
: ed by the Civil
Narayan Devarao Deshapande ... Plaintiff; : Judge (Senior
vs. : Division),
The State of Bombay ... Defendant. : Belgaum on 21st
----- January 1952 when
the following order was passed :-

- " 1) It is ^{hereby} ~~merely~~ directed that the defendant should pay
Rs. 71 to plaintiff per year in future on the first
of April 1952 and on the respective dates hereafter.
2) Plaintiff do recover Rs. 852 and the proportionate
costs of this suit from the defendant. The defendant
do bear his own costs. "

Endorsement from the District Government Pleader, Belgaum
dated the 30th January 1952 recommending the institution of an
appeal.

Letter from the Collector of Belgaum No. L.A.W. 869 dated
the 6th February 1952 forwarding the above with his concurrence

RESOLUTION : Sanction is accorded to the institution of
appeal in the Court of the District Judge, Belgaum against the
decision of the Civil Judge (Senior Division), Belgaum dated
the 21st January 1952 on the lines of the brief accompanying
Government Resolution, Legal Department No. 1024 dated the 16th
January 1951.

By order of the Governor of Bombay,

R.T. Katarki
R.T. Katarki,

(signed) Deputy Secretary to Government.

To

- ✓ The Revenue Department,
✓ The Collector of Belgaum,
✓ The District Government Pleader, Belgaum.

8/51

No. J- 736 41 of 1953.
Office of the Dist. Govt. Pleader,
Belgaum. Dated:- 9-10-1953.
To

From
Shri M.R. Patil, B.A., LL.B.,
District Government Pleader, Belgaum.

To
The Remembrancer of Legal Affairs, Bombay.

Subject:- C.A. No. 108/52 (U.S. 126/49).
1. The State of Bombay.... appellant.
Vs. (Deft)
1. Narayan Devarao Deshpande..... respondent.
(Plff).

LD
12 OCT 1953
E

Ref:- No. 3370/29-2-52. (No. Law 869/6-10-52).

Sir,
With reference to the subject mentioned above I
have the honour to inform you that the appeal is decided
on 30-9-1953 as under:-

" The appeal is allowed and the suit is
dismissed ".

Enclosed is a copy of the judgment follows.

Yours faithfully,

File No. 24349
Sub No. 13/10/53
E

M. R. Patil
Dist. Govt. Pleader, Belgaum.

Submitted

overleaf.

Pl. see S.S.P.'s letter

Appeal filed by the State
of Bombay is allowed and the suit
is dismissed

sh

13/10

col (M)

Sent for an affidavit by J. of Justice

via office

Mr.

13/10

Immediate.

No. 20816/E

43 10/11

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 18-11-1953.

To

The Government Pleader,
High Court, Bombay.

Subject:- ^{Amel} ~~First~~ Appeal No. 108/52 ^{C.S. No 126 of} ~~1947~~ ¹⁹⁴⁷.
~~Second~~
^

Sir,

With reference to your letter No. 736 dated
the 10th Oct. 1953 on the subject noted above, I have
the honour to request you to forward ^{an unmarked} a copy of the judgment
to this office, immediately.

Yours faithfully,

OC S. M.

for Remembrancer of Legal Affairs.

Submitted for Signature

13/10
908 (14)

BM.
20.3.

13/10
15/11

Await copy of report in S.R.H.C.

Yh

16/10

Supor

No. 21144 | 12

417

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 10), 19th October 1953.

Subject:- C.A. No. 108/52 in C.S. No. 126/47

MEMORANDUM.

With reference to his ^{letter} endorsement No. 736 dated the ~~10th~~ ^{19th} Oct. 1953, the District Government Pleader, ~~Belgaum~~ ^{an unverified} is requested to forward a copy of the judgment to this office immediately and to state what is the last date for filing an appeal.

OC Secy.

for Remembrancer of Legal Affairs.

The District Government Pleader, ~~Belgaum~~

19/10/53
19/10/53
19/10/53

identical copy 2 subject

✓
19/10

Report NB
19-10-53

S. Begam 8/57

(Recd. with D.P. No. J. 827 3-11-53)

2522-13,000-6-49-R(a)

CA 108/52 in S.M. C. 126/49 47/7
ಹುಕುಮನಾಮೆಯು

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮನಾಮೆಯು
(ಆರ್ಟಿಕಲ್ ೪೧, ಕ್ರಿ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ, ಶಿಡ್ಡೂಲ್ ೧)

ಬ್ಯಾರಿಸ್ಟರಿಯ ಎಕ್ಸ್‌ಪ್ರೆಸ್‌ಸು ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ತಾಯ - ಬ್ಯಾರಿಸ್ಟರಿ. ನಿ|| 17

ನಿಮ್ಮ ಅಪೀಲ ಮೊಕದ್ದಮೆ ನಂಬರು ೧೦೮ ೧೯೫೨ನೇ ಪೈಕಿ

(1) The State of Bombay

ಅಪೀಲಿಂಟ
(ಮೊದಲನೇ ಮುಖ್ಯ
ಪ್ರಶ್ನೆ)

ನಿರ್ದಿಷ್ಟ
(2) The State of Bombay vs. ...
(ಬ್ಯಾರಿಸ್ಟರಿ)

ರಿಸ್ಪಾಂಡಿಂಟ
(ಮೊದಲನೇ ಮುಖ್ಯ
ಪ್ರಶ್ನೆ).

ಬ್ಯಾರಿಸ್ಟರಿ ಇಲ್ಲಿಯ ನಿರ್ದಿಷ್ಟ ಸೇವೆಗಳ ಸಬ್-ಜಜ್ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೯ನೇ
ಮುಖ್ಯ ನಂಬರು ೧೦೮ನೇದರಲ್ಲಿ ತಾರೀಖು ೧ ನೇ ಜುಲೈ ತಿಂಗಳ ಸನ್ ೧೯೫೨ನೇ
ಇವನಿಯ ಹುಕುಮು ಗಮನ ಮೇಲೆ ಸದರಿ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಬ್ಯಾರಿಸ್ಟರಿ ಇವನು.

ತಾರೀಖಿನ ಹುಕುಮು ಗಮನ ಮೇಲೆ ಬ್ಯಾರಿಸ್ಟರಿ ಇಲ್ಲಿಯ

ಬಿ.ಪಿ.ಎಸ್. ೨೨೨ - ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೫೩ನೇ ಜುಲೈ ತಿಂಗಳಿನ ೪ ತಾರೀಖಿನ ದಿವಸಕ್ಕೆ ಬಿ.ಪಿ.ಎಸ್. ೨೨೨
ಮುಂದೆ, ಅಪೀಲಿಂಟನ ತರ್ಪಣದ ಕ್ರೀ. ಎಮ್. ಕೆ. - ಬಿ.ಪಿ.ಎಸ್. ೨೨೨ನೇ ಸಮಕ್ಷದಲ್ಲಿಯೂ.

ರಿಸ್ಪಾಂಡಿಂಟನ ತರ್ಪಣದ ಕ್ರೀ. ಎಮ್. ಬಿ. ೨೨೨ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ

೨೦-೩-೧೯೫೩ನೇ ಜುಲೈ
ಸುನಾವಣೆಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದೆ.

a The appeal is allowed. The decree of the
trial court is set aside and plaintiff's suit
is dismissed with costs throughout. The
cross objections too are dismissed with
no order as to costs.

IN THE COURT OF THE EXTRA ASSISTANT JUDGE,
AT BELGAUM.

57

Civil Appeal No.108 of 1952 from Decree in ~~six~~
suit
Special Civil ~~Appeal~~/No.126 of 1949 of the
Court of the Civil Judge, S.D., Belgaum.
(Shri N.V.Ranasubhe).

Shri M.R.Patil,
P.P.

1. The state of Bombay.

Appellant.

(Ori.Deft).

Against.

Shri.N.D.Joshi.

1. Narayan Devarao Deshpande, Landlord,
Age 54, Mosur, of Belgaum.

Respdt.
(Ori.plff)

Claim is Rs 252/- for both.

This is an appeal by the State of Bombay - Deft -
against the decision of the learned Civil Judge, Senior
Division, Belgaum, in Regular Civil Suit No. 126 of 1949
on his file. The suit was originally filed by the Respdt-
plff, against the Kurundwad Junior State, in the Court of
the District Judge, Kurundwad Junior State. On the merger
of States, the suit came to be transferred to the Court
of the Civil Judge, Senior Division, Belgaum. Then, the
State of Bombay was substituted as deft, in place of the
Kurundwad Junior State.

2. Plff has filed this suit,

- (a) For a mandatory injunction directing the
deft to go on paying him Rs 71/- per year as
his Deshpande Karakuni Hak, and
- (b) To recover Rs 3,489/- as arrears of the said
Hak, for 49 years, from 1897 to 1946 (both
inclusive), from the deft.

Plff's case, in short, is this :-

(a) His family is a Paragana-Watandar Deshpande of the territory, formerly known as Belgaum Ajjamnagar. The grant of the watan was made to his family, by the Mahomedan Kings, before the advent of the British Rule in India. Later on, the part known as Belgaum Ajjamnagar came to be divided. A part of it came to be included in the Sangli State, a part in the Kurundwad State and the rest in British India. Still later, the Kurundwad State was sub-divided into two parts, one known as the Kurundwad Senior state and the other known as Kurundwad Junior State. At the time of the division of this territory, part of his watan property came to be included in the Kurundwad Senior State, part in the Kurundwad Junior State, part in Sangli State and part in British India.

(b) The original grant from the Mahomedan Kings consisted of lands as well as a cash allowance. After the creation of the different States, the cash allowance due to his family came to be paid pro.rata, by the different States. His family was Kadim Inamdar with reference to the Kurundwad R~~u~~ State.

(c) It fell to the Kurundwad Junior State, also, to pay him some cash allowance. In this amount due and payable to him, was included a sum of Rs 71/- per annum, as Deshpande Karakuni Hak. The Kurundwad Junior State was actually paying Rs 71/- to his family towards the said Hak, upto the year 1907. In that year, Judi of 5 annas in a rupee was levied on the entire watan consisting of lands and cash allowance and the services, which his family was liable to render, was commuted and dispensed with. At the same time, the Kurundwad Junior State also stopped payment of Rs 71/- due to his family as Karkun Hak. This act of the state was illegal.

(d) So, plff's father moved the State authorities, to go on paying him Rs 71/- per year as before. But, the State Karabhari refused to make that payment, by an order passed in 1919. Plff's father preferred an appeal to the Chief of the State. The Chief too was pleased to reject the prayer of --

plff's father. This order was passed by the Chief in 1925.

(e) Plff and his father, could not, however, enforce their rights in a Court of law, as such suit against the State were prohibited. In 1946, however, the Chief of the State was pleased to confer on his subjects, the right of filing suits in such cases, against the State. Hence, plff has now been able to file this suit. Notice required by Sec.80 of the Code of Civil Procedure has been duly served. The act of the State, stopping payment is unauthorised and illegal and hence the suit be decreed in terms prayed for, etc.,

3. The Kurundwad State has put in its written statement at Ex.9, when the suit was pending in the State Court. The Bombay State has put in its written statement at Ex.25. It has adopted the contentions made by the Kurundwad State and raised some fresh contentions too. The principal contentions are these:-

The Deshpande Karakuni Hak, is no Hak or right at all and much less any Kadim Inam. It was not part and parcel of the Watan. It was some extra remuneration for Karakuni services that were being separately rendered by plff's family. All services of the plff's family were commuted by levying a Judi of 5 annas, on the lands. As there was no need for plff's family to render any Karakuni services thereafter, there was no need for the State to make any payments to plff's family on that account. It has been so held by the State authorities in the years 1919 and 1925. These orders are binding on the plff. The notification of 1946 giving rights to subjects to file suits against the State is not retrospective in effect. The claim is barred by time. The Bombay Government, is not, in any event, bound by the acts of the former Kurundwad State. The suit is barred under the Revenue Jurisdiction Act as well as the Pensions Act. The Bombay State is not liable to pay anything to the plff. Hence, the suit should be dismissed, etc.

4. The suit was set down for hearing on as many as 13 issues. The findings of the learned trial Judge are that, the Deshpande Karakuni, was a Kadim Hak of plff's family, it could be exercised even after the commutation of services in 1898; the decision of 1919 and 1925 are not binding on plff; the 1926 notification was not retrospective; the suit was not barred under the Pensions Act and Revenue Jurisdiction Act; the claim of the plff was in time; the Bombay State is liable to pay the amount claimed; the plff has a valid cause of action. On these findings, the learned trial Judge has issued a mandatory injunction directing the deft to go on paying Rs 71/- every year to the plff from 1-4-1952. He has also awarded a sum of Rs 852/- to plff, as arrears of the Karakuni Bab for 12 years before the suit. Being aggrieved by this decision, deft has come in appeal.

5. The plff has filed cross-objections with respect to the amount due to him, from the date of suit, till 1-4-1952, which has not been awarded by the learned trial Judge.

6. The findings of the learned trial Judge that the suit is not barred by the Revenue Jurisdiction Act and the Pensions Act, and that the Bombay Government is liable to meet the ~~proven~~ proved liabilities of the Kurundwad State and that the 1946 notification is not retrospective, are not challenged before me. The only issues that arise for decision in this appeal are:-

- (1) Whether plff proves that the Deshpande Karakuni, is a Hak or Right, and that it is a part and parcel of the original ~~Hak~~ and further that it is also a Kadim Hak.
- (2) Does he prove that a Jodi of 5 annas was levied on the cash allowance also, when the services came to be commuted by the Kurundwad State in 1897 or 1898 ?

55

- (3) Does he prove that he is entitled to recover the amount, inspite of the final orders to the contrary passed by the Bajesaheb of Kurundwad State in 1925
- (4) Is the suit in time ?
- (5) To what reliefs, if any, is plff entitled ?

7. My findings on these issues are :-

- 1) Not proved. 2. Not proved. 3. Does not survive. 4. Yes. 5. None.

REASONS.

8. There is no dispute about the fact that plff's family was the Paragana Deshapande Watanidar of the territory, once known as Belgaum Ajjannagar. According to the Karnatak Gazetteer (page 376), Belgaum Ajjannagar was the territory of Belgaum and its adjacent villages. There is also no dispute about the fact that, that territory was broken up, part having been included in Kurundwad Junior State, part in Kurundwad Senior State, part in Sangli State and part in the then British India. This splitting up of the territory appears to have taken place some time before the year 1856. The original grant of the Watan was made to plff's family, by the Mahomedan Rulers. The watan consisted of lands and cash allowances with some service or services attached to it. There is no dispute between the parties on this point too. When the territory was split up, the Watan property of plff's family too came to be split up. A part was included in Sangli State, a part in Kurundwad Senior State, a part in Kurundwad Junior State, a part in the then British India. Cash allowance too came to be split up. Each State began to pay it to plff's family, in proportion to the Watan, in its territory.

9. We can, therefore, proceed to consider the claim made by the plff and the evidence led in the case, on the basis of the admitted facts, mentioned above. At the outset, it may be noted here that, no Sanad has been

produced by the plff, either with respect to the original grant or with respect to its recognition by the Kurundwad Junior State, with which only, we will be concerned in this case. Though it is admitted on both hands that a liability to render service, was attached to the Watan, there is no evidence, worth the name, documentary or oral, to show, what exactly the duties of the Deshpande were. There is also no evidence to show exactly, what were the services required to be rendered by the plff's family, and which were appurtenant to the Watan. The most important, and practically the only point, arising in the case is, whether the Deshpande Karkuni Hak (as plff calls it) or ~~an~~ Hak (as deft calls it), was an ~~essential~~ essential element or part and parcel of the Watan. If it were so, then plff must succeed. If not, plff must fail.

10. Plff has examined himself at Ex.40. He has sworn that the Karkuni Hak was included in the Deshpande rights. He cannot possibly have any personal knowledge as to what were the terms of the original grant. Plff has, however, produced some documents in support of his claim. I now proceed to consider them, one by one.

11. The first document produced by the plff, is the Dumal Akar Patrak, at Ex.41. It is a statement prepared and produced by the Ruler of the Kurundwad State, before the Inam Commission in Fasali 1266 (i.e., 1856 A.D.). In this Dumal Akar Patrak, the lands and cash allowance pertaining to the plff's family have been mentioned. It appears that plff's family held lands in seven villages. It can be gathered from Ex.41 that for these 7 villages, a total amount of Rs 71/- was being paid to plff's family as Karkuni pay. The following amounts have been shown in Ex.41 as due to " Deshpande " for the following 7 villages:-

1. Yallur ...	Rs 15-0-0.	page 1, Ex. 41.
2. Mazagaon ..	" 5-0-0.	" 5, " "
3. Juna-Belgaum..	" 3-0-0.	" 9, " "
4. Wadagaon ...	" 25-0-0.	" 11, " "
5. Mangarge ...	" 9-0-0.	" 12, " "
6. Bikanalli...	" 4-0-0.	" 14, " "
7. Tarihal ...	" 10-9-0.	" 16, " "
	" 71-0-0.	

The amount payable, has been mentioned in some places as "Deshpande Karakun" and at some places as "Deshpande Karakuni". There is no mention anywhere in Ex. 41 whether this "Deshpande Karakun" or "Deshpande Karakuni" was a part of the Deshpande Watan or something apart from or independent of the Deshpande watan. In my opinion, all that this statement would mean is, that the Ruler of Kurundwad had admitted before the Inam Commission in Vasali 1266, that a sum of Rs 71/- was to be paid to plff's family as Deshpande Karakuni pay. It would be hazardous to go further and infer that, the amount was being paid to plff's family, only because the Deshpande Karakuni was an integral part of the watan and the services appartenant thereto.

12. It is the case of the plff that, the Sangli State, Kurundwad Senior State as also the British Government, had expressly recognised the Right of his family to the Deshpande Karakuni Hak, and had been actually paying his family the amount due to by them, on this account. He has stated that Judi was levied on the Watan, in 1863 in British India, in 1878 in the Sangli State, in 1889 in the Kurundwad Senior State and in 1898 in the Kurundwad Junior State. After the Judi was levied, the services in all the States were commuted. It is the case of the plff, that inspite of this commutation of services, the British Government, the Sangli State and the Kurundwad Senior State had been paying his family the Deshpande Karakuni Hak pay. Plff has, however, admitted in his

deposition, that the British Government has issued a Sanad to his family and further that, in that Sanad, no item has been separately mentioned as "Deshpande Karakuni Bab or Mak", in the cash allowance payable. There is, therefore, no evidence to show that the British Government was paying any Deshpande Karakuni Bab to the pliff's family.

13. To show that the Sangli State was paying his family the Karakuni Bab, pliff has produced, two extracts of Petha Khata, from the Shahapur Mamlatdar's office. They are at Exs.42 and 64. In the extract at Ex.42, it has been mentioned that, Rs 180/- as "Gavaganna", Rs 46/- as Abadagiri, Rs 40/- for Karakuni and Rs 15/- for Tashtifi i.e., a total sum of Rs 281/- were due to the pliff from the State. This extract appears to be for the Fasali years 1353 to 1357. Similar accounting has also been made in the extract at Ex.64, which is for the year 1918-19. These extracts ~~Ex.~~ which no doubt, support the case of the pliff can by no means be taken as conclusive proof of his assertions. There is no evidence to show that the terms of the service commutation settlement made by the Sangli State in 1878, were exactly the same or similar to the terms of the Service Commutation settlement made by the Kurundwad Junior State, in the year 1898.

14. Pliff has produced two extracts of Petha Khata from the Kurundwad Senior State also. They are at Exs.43 and 65. Both these extracts show that Rs 10/- were due to be paid and paid to the pliff's family. They do not, however, show specifically that the amount was due to be paid and paid to pliff's family as "Deshpande Karakuni Bab". The amounts may even be some other cash-allowance. These extracts, therefore, would not help the pliff, in any way.

15. Pliff has stated in his deposition that the Sanad granted to his family by the Mahomedan Emperor had been produced before the Inam Commission. This Sanad or at

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least its certified copy could have been produced by the plff. A copy might have been made available to him by Land Alienation Office, Poona. The production of the Sanad, would have settled the point in dispute, once for all, conclusively. No explanation has been given by the plff as to why the Sanad or its certified copy has not been produced.

16. Now coming to the relations between plff's family and the Kurunwad State, we find that plff's family was in fact, rendering Karakuni service to the State, and for that, a sum of Rs 71/- was being actually paid to it, upto the year 1898. The Account books of the State produced by the plff show it, and this fact has not been denied by the deft. The letter at Ex.45, written on behalf of the Mamlatdar shows that Rs 66/- were demanded from plff's ancestor towards the pay of the Karakun employed in the Taluka Office. The letter at Ex.46 dated 22-11-1881 is also to the same effect. The letters at Exs.47 and 48 of the years 1853 and 1871, respectively, are also suggestive of the same facts. One can infer from these letters that, the family of the plff was being paid Karakuni Bab by the State, and it was the duty of plff's family to depute one clerk on its behalf to work in the Mamlatdar's office and pay his salary. The letters mentioned above, have been written by the Mamlatdar's office, whenever plff's family had neglected to pay the salary of the Karakun deputed by it, to work in the office. The letter at Ex.45, appears to have been written by the Shahapur (Sangli State) Mamlatdar's office. Ex.46 appears to have been written by the Pachapur Mamlatdar's office, which appears to have been under Sangli State.

17. None of the documents produced by the plff, however carries ~~any~~ us anywhere near the point actually in dispute, that is, whether the Karakuni, was an integral part of the original watan. On the other hand, the deft has --

produced three documents, at Exs.63,66 and 67 in support of its contention that the Karakuni was not part of the Watan. It is the case of the plff that the Kurundwad Junior

State, dispensed with the services of the family and also stopped the payment of the Karakuni Hak or Bab, in the year 1898. Plff's father, Devarao was then alive. He does not appear to have taken any steps, when the Karakuni Bab was stopped in 1898. Sometime in or about the year 1919- i.e., about 20 years after the payment was stopped by the State- Devarao appears to have preferred an application to the Kurundwad Junior State authorities, asking them, to pay him Rs 71/- towards Karakuni Bab, as before, . The

order passed by the State at Karabhari, below that application, is at Ex.63. It is dated 28-11-1919. From this order, we find that, plff's father had tendered oral as well as documentary evidence, before the State Karabhari, in support of his claim. The State Karabhari has written a detailed order and rejected the claim of the father of the plff. It is not necessary to set out the contents of that order in detail here. The sum and substance of that order is, that there was no evidence to show that the Deshpande Karakuni, was any part and parcel of the original Watan or grant. The State Karabhari has virtually said in his order that different kinds of taxes were being levied

in the villages till the Judi settlement; that at that time, Karakuni services were being taken from plff's family; that all these taxes were abolished after the Judi Settlement and hence, there was no need for any Deshpande Karakuni and hence that office was abolished; and since the office was abolished, there was no need to pay any salary to the plff's family as Karakuni Bab. In effect, the order of the State Karabhari suggests that the Office of Deshpande Karakuni had nothing to do with the original grant of the Watan; that extra work was demanded from plff's family at some later time (after the original grant) for which extra remuneration was being paid; and since the

State stopped demanding the extra payment as Deshpande Karakuni Bab. If this line of reasoning is correct, then, we will find that plff has no case at all.

18. Being dissatisfied with this order of the State Karabhari, plff's father preferred an appeal to the Rajesahab or Chief of the Kurundwad State. Ex.66 is the Memo of that appeal. It is dated 19-4-1920. The Rajesahab heard the appeal and his order is at Ex.67. The first order rejecting the claim of plff's father was made by the Rajesahab on 27-3-1921. Thereafter, it appears, that the plff's father adduced, additional evidence, before the Rajesahab in support of his claim. After considering that evidence too, the Rajesahab once again rejected the claim of plff's father on 31-5-1923. There appears to have been a rehearing of the matter by the Rajesahab. The claim of plff's father was finally rejected on 27-6-1925. All these orders can be found at Ex.67. There is no need to set out the details of all these orders here. It is sufficient to say that the Rajesahab too has held on the materials placed before him by plff's father, that, the Karakuni Bab was not an integral part of the original grant, but was an additional duty imposed at a later date for an extra remuneration. He has concurred with the opinion expressed by the State Karabhari, in his order at Ex.63. By referring to these orders of the State Karabhari and the Rajesahab, I do not mean to suggest, that, they solve the point at issue or conclude it finally against the plff. But, they afford some material to show us as to how the State authorities took the matters to stand. Even if we leave Exs.63 and 67 out of consideration, we find that the documents produced by the plff would not show that the Karakuni Hak was an integral part of the original Watan.

18. The Hereditary District Officers were called Paragana Watandars. A Paragana consisted of several villages in each Taluka with one town at the head. The Paragana

Watandar Deshpande or Karyat Kulkarni was the head of the Kulkarnis. In each Paragana, the head of the Patils was responsible for the Collection of the Government Revenue and the Head of the Kulkarnis kept Accounts and Correspondence connected therewith. "Deshpande" was the District Accountant as distinguished from village Accountant. (Vide pages 62 and 6 of Jogalekar's Land Alienation Manual). If, therefore, the duties of the Paragana Watandar Deshpande were to maintain District Accounts and the correspondence connected therewith, they were essentially in the nature of a clerical work. For doing this work, there was the Watan for remuneration. The Karakuni Hak or Eab does not appear to have any place in the Deshpande Watan, as it was understood then. Supposing for a moment that this Karakuni was an essential part of the Watan, then one fails to understand, why, a separate salary-- in addition to the watan-- was required to be paid to the family of the plff. When this question was put to the learned pleader for the respdt, he suggested that it may have been separately assessed and paid for the sake of convenience. His suggestion is not, however, convincing. The memo of Appeal at Ex.66, shows that, plff's father was getting a sum of Rs 305/- as cash allowance before the service commutation settlement and after that, Rs 71/- were deducted therefrom. This sum of Rs 71/- was a separate item altogether. There is no evidence to show that it was part and parcel of the original grant of the cash allowance.

19. The learned trial Judge has observed in paragraph 3 of his Judgment that:

This paragana Watan granted to the family of plff for performing Karakuni service to the State.....
..... Some amount was required to be paid by each State to the family of plff for the sake of this service. The amount, so paid was a part of the whole cash allowance that was granted as Inam to the family of the plff along with lands. In short, some lands and cash allowance including this

03

Karakuni Bab constituted a Paragana Watan Inam to the family of the plff, before the advent of the British India.

The learned Judge has proceeded to consider the evidence in the case, after making these observations. But, with all respect to the learned Judge, I do not find any evidence in the case to justify or substantiate these observations. The learned Judge appears to have mainly relied on the fact that the Karakuni Bab has been mentioned as a cash allowance in Dumal Patrak Ex.41. But, I have already pointed out that there is nothing in the Dumal Patrak itself to suggest that the Karakuni Bab was an integral part of the original grant. It may be that the Karakuni Bab was also paid when the whole territory was Ajjannagar. But, that would mean that it was part of the Watan as granted originally. Considering the entire evidence before me, therefore, I am of opinion that the Karakuni Hak is not proved to be the part and parcel of the original Watan. I would therefore, record my finding on issue No.1 in the negative.

20. In view of my finding on issue No.1, the second issue does not survive at all. It is the case of the plff that in 1897 or 1898, the Kurundwad Junior State effected a Service Commutation Settlement, by levying a Judi of 5 annas in a rupee, over the entire Watan, including the cash allowance. This statement necessarily means that there was a fresh contract or agreement between the State and plff's family in 1897 or 1898. There is no evidence to show that the Kurundwad Junior State, strictly adhered to all the terms of the Gordon Settlement followed in the British India. Plff has not produced any Sanad or any other writing to show that the terms of the new agreement made in 1897 or 1898 were. He has not stated what assessment was payable by the Watan lands in his possession and what was the total amount levied by the State then, as Judi. There is therefore, no evidence to show that a Judi was levied on the cash allowance also. Hence, I record my finding on issue

No.2 in the negative. But, this question is not at all material now, in view of the fact, that (in my opinion) the Karakuni Bab was no part of the original Watan.

21. The third issue too would lose significance in view of my finding on issue No.1. If I had held that the Karakuni Bab was part of the original Watan, I would have certainly said that, plff was entitled to enforce his claim now, inspite of the orders passed by the State Karabhari and the Rajesahab, in 1919 and 1925 respectively. As matters stand now, this issue does not survive.

22. For the appellant, it is contended that the present suit is not in time in view of Article 131 of the Limitation Act. I do not think that this contention is tenable. There is no doubt about the fact that the Kurundwad State stopped payment to the plff, so long back as in the year 1898 and further, expressly denied plff's right in 1925. Plff's right, if at all it was a right, was denied more than 12 years before the present suit. But, according to the law then prevailing in the State, the plff could not enforce his right in any Court of Law, as suits against the State were expressly forbidden. If no remedy was open to the plff in a Court of law, ~~as suits~~ then it would not be correct to say that time would begin to run against him from the date on which the Right was denied. Many instances can be given, where though a Right is in tact, the remedy is barred. When there was no remedy open to plff, the question of that remedy becoming barred by time does not arise at all. The State declared in 1946 that subjects might file suits against the State to enforce their Rights against the State. If at all time begins to run against the plff, it would be from the date of the 1946 Notification. The suit has been filed by the Plff soon after the Notification. Hence, I am of opinion that the suit is in time. I record my finding on issue No.4 accordingly.

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23. From the evidence discussed so far, it is clear that plff is not entitled to the reliefs claimed by him. His suit requires to be dismissed. Obviously, therefore, the cross-objections too require to be dismissed. Hence, I proceed to pass the following order :-

ORDER

The appeal is allowed. The decree of the trial Court is set aside and plff's suit is dismissed with costs throughout. The cross-objections too are dismissed with no order as to costs.

30th September, 1953.

Sd/- R.T.Kadkol.

Extra Assistant Judge,
Belgaum.

Suits.

Belgaum.

67/26
For an injunction directing Government to pay annually to the Plaintiff Rs. 71 as Deshapande Markuni Hak and for arrears.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 20751/E.
Bombay Castle, 3rd August 1954.
September

Read Government Resolution, Legal Department No. 2917 dated the 22nd February 1952.

Letter from the District Government Pleader, Belgaum

In the Court of the Civil Judge : No. 736 dated
(Senior Division), Belgaum. : the 10th
Civil Suit No. 126 of 1949. : October 1953
Narayan Devarao Deshapande... Plaintiff; :
vs. : stating that
The State of Bombay .. Defendant. :

Civil Appeal No. 108 of 1952 in the suit noted in the margin was decided by the Extra Assistant Judge, Belgaum on the 30th September 1953 when the following order was passed:-

"The appeal is allowed. The decree of the trial Court is set aside and plaintiff's suit is dismissed with costs throughout. The cross-objections too are dismissed with no order as to costs."

Letter from the District Government Pleader, Belgaum No. 820, dated the 11th November 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the appeal is recorded.

By order and in the name of the Governor of Bombay

R. T. Katarki
original (R.T. KATARKI)
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

Submitted for signature

hsp/30/8

30/8

Sol (M.L.) 31/8

Sol (M.L.)

S.S. Chaudhary

DS (Cant)

*issued
22
2/9*

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In The High Court of Judicature at Bombay.

Second Appeal No. 299 of 1954.

District Belgaum.

Narayanrao Devrao Deshpande of }
Hosur, Belgaum. } Appellant. (Orig. Plaintiff.)

Versus.

The State of Bombay. Respondent (Orig. Defendant.)

Claim Rs. 1917/- for both purposes.

Feeling aggrieved by the decree passed by the Court of the Extra Assistant Judge, at Jalgaon, on 30th September 1953 in Civil Appeal No. 108 of 1952, from the decree in Special Civil Suit No. 124 of 1949 of the Court of the Civil Judge, S.D., the appellant above-named begs to file an appeal against the same, on the following amongst other grounds:-

1. That the Lower ^{appellate} Court has erred in law in reversing the decree of the trial Court and dismissing the plaintiff's Cross-objections.
2. That it is an error in law to hold that the Deshpande Karkuni is not a Hak or right; that it is not a part and parcel of the original watan and that it is not a kadim Hak.
3. That it is an error in law to hold that judi was not levied on the cash allowance when the service came to be commuted by the Kurundwad State in 1897 or 1898.
4. That the evidence on record clearly shows that the Deshpande Karkuni is a Hak or right and that it is a part and parcel of the original watan.
5. That the Lower appellate Court failed to note that in any case the only question which arose for consideration was whether the right of the plaintiff's family to receive Rs. 71/- per year as "deshpande Karkuni" was a kadmi grant, and not whether it formed part and parcel of the original Deshpande watan. This Kadmi right is proved. The act of plaintiff's family of rendering service and receiving Rs. 71/- in lieu of that service constituted a right which was enjoyed by the plaintiff's family from before the creation of the Kurundwad State and which was recognised by the Ruler of that state.
6. That Exs. 41, 42, 43, 64, 65, 66, 47 and 48 are misread and misinterpreted and their legal effect is misjudged.

7. That the lower appellate Court failed to note that Ex.41 is a clear admission of the Ruler of the Kurundwad State that the Deshpande Karkuni Hak of the plaintiff's family is a kadmi grant.

8. That it was an error to suggest that the British Government was not paying anything to the plaintiff's family on account of Deshpande Karkuni Hak, on the ground that no item has been separately mentioned as "Deshpande Karkuni Bab or Hak" in the Sanad issued to Plaintiff's family by the British Government.

9. That the lower appellate Court was unjustified in imagining that the amount of Rs.10/- mentioned in Exs.43 and 65 may be some cashallowance other than "Deshpande Karkuni".

10. That the Lower/^{appellate}Court ~~xxx~~ should have noted that the production of the Sanad granted to plaintiff's family by the Mahomedan Emperor or its certified copy was not necessary. The plaintiff could not produce the same and he has sufficiently explained its no-production.

11. That the orders Exs.63 and 67 are illegal and ultra-vires. The Kurundwad State had no power to abolish the "Deshpande Karkuni" Hak of plaintiff's family. The reasoning of the said orders supports plaintiff's claim.

12. That the lower appellate Court was wrong in observing that "The Karkuni Hak or Bab does not appear to have any place in the Deshpande Watan, as it was understood then."

13. That the District Court was wrong in observing that the "Deshpande Karkuni" was an independent item of payment, and that by dispensing with the services the State could dispense with payment of Rs.71/-. If the said item was an independent item, the state would have straightway paid it to the Clerk appointed to do the work for the Plaintiff. Besides, the plaintiff's family of which Karkuni was one item.

14. That the lower appellate Court's reasoning that the independent designation of the Hak as Karkuni Bab establishes its independence, is fallacious. A glance at Exs. 42 and 64 shows that the cash allowances are divided under various headings.

15. That the lower appellate court failed to note that the plff's ~~fx~~ oral evidence in support of his contentions, went unchallenged. The pl

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The plaintiff's allegation that the Judi came to be levied on all the watan property including the cash allowance, should have therefore been accepted as true.

16. That the pleadings are not properly construed and proper issues are not framed.

17. That the evidence on record is misread and misappreciated.

18. That the onus has been erroneously placed upon the plaintiff.

19. That a new case has been ^{made out for the defendant,} ~~approached from a wrong point of view.~~

20. That the whole case has been approached from a wrong point of view.

21. That proper legal inferences and presumptions are not drawn in plaintiff's favour.

22. That the position of law regarding the questions involved in the case is not properly appreciated.

23. That the plaintiff's claim for mandatory Injunction and arrears of rent should have been decreed and the Cross-Objections should have been allowed.

24. That the plaintiff is entitled to a decree for the dues that became payable after the date of the suit.

25. That the order as to costs is clearly wrong.

26. That the decree is contrary to law, equity, justice and precedents.

Bombay,)
6th January 1954.)

Sd/- M.M.Virkar.

Advocate for the Appellant.

IN THE HIGH COURT OF JUDICATURE,
APPELLATE SIDE, BOMBAY.

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Appeal No. 299 of 1954 From Appellate Decree.

Narayanrao Devarao Deshpande of } Appellant.(Orig.Plff.)
Hosur, Belgaum.)

Versus.

The State of Bombay. ...) Respondent.(Orig.Deft.)

Claim Rs.

No.2262 of 1954.

From

e Dy. Registrar,
High Court, A.S.Bombay;

To

*The Secretary
Legal Department, Secretariat, State of Bombay,

Bombay, 16th August 1954.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Extra Assistant Judge of Belgaum in Appeal No.108 of 1952, and the same having been registered in this Ct and this Court having on 16th July 1954, ordered notice to be issued, I have the honour to inform you that the hearing of the said appeal will take place on the 20th day of Sept.1954, or any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either by a pleader of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

Yours faithfully,

* To be served on the
Govt.Pleader, H.Ct., A.S., Bombay. For Dy. Registrar.

Recd. on 23-8-1954.

Sd/-
for Govt.Pleader, H.Ct.

25

Suits:
Belgaum.
For ~~and~~ injunction directing Government to
pay annually to the plaintiff Rs.71 as
Deshpande Karkuni Hak and for arrears.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 21,123/E
Bombay Castle, 11th September 1954.

Read Government Resolution, Legal Department No.20751/E

In the Court of the Civil Judge (Senior : dated the 3rd
Division), Belgaum. : September 1954 .
Civil Suit No.126 of 1949. :
Narayan Devarao Deshpande... Plaintiff : Endorsement
vs. : from the Govern-
The State of Bombay..... Defendant. : ment Pleader,

High Court, Bombay No.7278 dated the 26th August 1954 request-
ing Government's sanction to the defence of the Second
Appeal No.299 of 1954 filed by the plaintiff in the suit
noted in the margin.

RESOLUTION: Sanction is accorded to the defence of
~~Second~~ Appeal No.299 of 1954 in the High Court, Bombay on the
lines of the brief accompanying Government Resolution, Legal
Department No. 1024 16th January 1954.
~~2017~~ dated the ~~22nd January 1952~~ and the
favourable grounds contained in the judgment of the Civil
Judge, (Senior Division), Belgaum dated the 30th September
1953.

By order and in the name of the
Governor of Bombay,

original *R.T. Katarki*
(R.T. Katarki),
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Belgaum,
The Government Pleader, High Court, ~~Belgaum~~ Bombay,
The District Govt. Pleader, Belgaum.

KML/6.9

Submitted for signature

11/9

S.S. (R.T. Katarki)

Secy (M.L.)

10/9

D.S. (M.L.)

*Recd.
11/9
issued.
NP
11/9*

No.

Office of the
Government Pleader, High Court,
Bombay, d/- 9th October 1956.

From

Shri H.M. Choksi, B.A. (Hons) LL.B.,
Government Pleader, High Court.

To

The Collector of Belgaum.

Sub: Second Appeal No. 299 of 1954 in
Civil Suit No. 126/49 in the Court
of Civil Judge, S.D., Belgaum.
Narayan Devarao Deshpande
Vs
The State of Bombay.
....

33362 ✓
E
12/8/56

Sir,

In continuation of this office No. 7277 dated
26th August 1954 on the subject noted above, I have the
honour to inform you that the above matter came up for
final hearing before the Hon'ble High Court, Bombay, on
9th October 1956 and the following order was passed:

Coram: Gajendragadkar, J.

"Appeal dismissed with costs."

D/- 9th October 1956.



Yours faithfully,

b. Hanvi

for Government Pleader, High Court.

✓ No. 11529

Copy forwarded with compliments to the Remembrancer of Legal
Affairs, Bombay, with reference to G.R.L.D.No. 21123/E dated
11th September 1954 for information.

Submitted

SA no 299/54 is
decided in favour of Govt.
File in S. Belgaum 8/57
13/10 Sul (RM) 13-10